



### **VENUE**

2. Venue is proper in this Court pursuant to Title 40 U.S.C. §3133(b)(3) and Title 28 U.S.C. §1391(b)(2).

### **PARTIES**

3. This is a civil action brought in the name of the United States of America for the use and benefit of W. P. Howle Masonry Contractor, Inc. (“**Howle**”). Howle is a Texas corporation with its principal place of business in Wichita Falls, Wichita County, Texas.

4. Defendant Grahams Construction Inc. (“**Grahams**”) is a corporation organized under the laws of the state of North Carolina with its principal place of business in North Carolina.

5. Defendant Travelers Casualty and Surety Company of America (“**Travelers**”) is a corporation organized under the laws of the state of Connecticut with its principal place of business in Connecticut.

### **FACTS**

6. Grahams as prime contractor entered into a contract with the United States Army Corps of Engineers for construction of the D/B Physical Fitness Center at Ft. Sill Army Base in Lawton, Oklahoma, Contract No. 912DY-11-D-0040-DS01 (the “**Project**”).

7. Grahams is the principal and Travelers is the surety on the payment bond covering all persons having a direct relationship with Grahams or a subcontractor of Grahams for furnishing labor, material or both in the prosecution of the work provided for on the Project (the “**Payment Bond**”).

8. Grahams entered into a written subcontract with Howle for Howle to provide labor and materials on the Project (the “**Subcontract**”). A true and correct copy of the Subcontract is attached hereto as **Exhibit “1”**.

9. The original amount of the Subcontract was \$1,733,746.00. The amount was adjusted by virtue of various change orders to \$1,763,660.00.

10. Furthermore and throughout the Project, Grahams directed Howle to perform additional work. Howle performed this additional work and Grahams became contractually bound to pay the same. The value of this extra work directed by Grahams is \$103,168.00, bringing the total owed to Howle to \$1,866,828.00.

11. Beginning on or about July 1, 2013, and continuing thereafter through May 31, 2015, Howle fully performed its requirements and obligations under the Subcontract and completed its work in a timely manner.

12. All of the work under the Subcontract, was fully completed or substantially completed as of May 31, 2015, and was fully completed and accepted by the Owner on or about March 1, 2016.

13. By reason of Howle’s full performance of the Subcontract work and performance of the additional work, Howle became entitled to full payment by Grahams in the total amount of \$1,866,828.00. Of such sum, Grahams has paid only \$1,468,246.60, leaving an unpaid balance of \$398,581.40.

14. Despite notice and demand for payment, Grahams and Travelers failed and refused, and continue to fail and refuse, to pay to Howle the amounts due and owing.

15. As a direct result of Grahams' default on the Subcontract to pay the amount due and owing to Howle, it has been necessary for Howle to retain attorneys to pursue and protect Howle's interest in this suit and Howle is entitled to recover reasonable and necessary attorneys' fees for its representation in this matter.

**CAUSE OF ACTION ONE – BREACH OF THE SUBCONTRACT**

16. Howle has performed all requirements and conditions precedent pursuant to the Subcontract with Grahams to provide certain materials and labor for the Project, and Howle is entitled to recover from Grahams all the amounts due and owing on the Subcontract.

17. Grahams' failure to pay Howle the amounts due constitutes breach of the Subcontract.

18. As a result of Grahams' breach of the Subcontract, Howle has been damaged and is entitled to recover an amount in excess of \$398,581.40, together with pre-judgment and post-judgment interest thereon, and reasonable attorneys' fees, costs and expenses incurred in the recovery thereof.

**CAUSE OF ACTION TWO – PAYMENT BOND**

19. Pursuant to the Payment Bond and the Miller Act, Howle is a person protected by the Payment Bond under Title 40 U.S.C. §3133(b).

20. Howle has not been paid in full within ninety (90) days after the day on which the latest material or labor was furnished or supplied by Howle to the Project.

21. All conditions precedent to recovery by Howle against Grahams and/or Travelers under the Subcontract and on the Payment Bond have been performed or have occurred.

22. Howle is entitled to recover the sum of \$398,581.40, from the Defendants Grahams and Travelers.

**WHEREFORE**, Plaintiff the United States for the Use and Benefit of W. P. Howle Masonry Contractor, Inc., prays for judgment against the Defendants Grahams Construction Inc. and Travelers Casualty and Surety Company of America, jointly and severally, for: actual damages in an amount in excess of \$398,581.40, together with pre-judgment and post-judgment interest thereon at the highest rate allowed by law, and reasonable attorneys fees, costs and expenses incurred in this matter, and for all such other and further relief as the Court deems proper.

Respectfully submitted,

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